

FILED '05 MAY 20 14:13 USDC-ORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

| | | |
|---------------------------------|---|----------------------|
| MICHAEL HUDGINS, |) | |
| |) | |
| Plaintiff, |) | Civil No. 02-6040-TC |
| |) | |
| v. |) | VERDICT |
| |) | |
| CITY OF ALBANY, PAT MERINA, DON |) | |
| O'MALLEY, PHIL McLAIN, and |) | |
| JOE SIMON, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

VERDICT ONE: FIRST AMENDMENT CLAIM

1A. Has Plaintiff proved that the exercise of his free speech rights was a substantial or motivating factor in the denial of promotion?

YES X NO _____

If your answer to question 1A is "NO," please go to question 1C below.

If your answer to question 1A is "YES," please determine which Defendants are liable in 1B.

1B. The following Defendants are liable for the denial of promotion:

| | | |
|--------------------------|-----------------------------------|----------|
| Defendant McLain | YES _____ | NO _____ |
| Defendant Merina | YES _____ | NO _____ |
| Defendant O'Malley | YES <u> X </u> | NO _____ |
| Defendant City of Albany | YES <u> X </u> | NO _____ |

1C. Has Plaintiff proved that the exercise of his free speech rights was a substantial or motivating factor in his transfer from Detectives to Patrol?

YES ~~X~~ NO _____

If your answer to question 1C is 'NO,' please go to question 1E below.

If your answer to question 1C is "YES," please determine which Defendants are liable in 1D.

1D. The following Defendants are liable for Plaintiff's transfer out of Detectives and into Patrol:

| | | |
|--------------------------|-----------------------------------|----------|
| Defendant McLain | YES <u> X </u> | NO _____ |
| Defendant Merina | YES _____ | NO _____ |
| Defendant O'Malley | YES <u> X </u> | NO _____ |
| Defendant City of Albany | YES <u> X </u> | NO _____ |

1E. Has Plaintiff proved that the exercise of his free speech rights was a substantial or motivating factor in his referral for criminal prosecution?

YES ~~X~~ NO _____

If your answer to question 1E is "NO," please go to question 1G below.

If your answer to question 1E is "YES," please determine which Defendants are liable in 1F.

1F. The following Defendants are liable for Plaintiff's referral for criminal prosecution:

| | | |
|--------------------------|-----------------------------------|----------|
| Defendant McLain | YES <u> X </u> | NO _____ |
| Defendant O'Malley | YES <u> X </u> | NO _____ |
| Defendant City of Albany | YES <u> X </u> | NO _____ |

1G. Has Plaintiff proved that the exercise of his free speech rights was a substantial or motivating factor in his 30 day suspension without pay?

YES ~~XXXX~~ NO X

If your answer to question 1G is "NO," please go to 1I below.

If your answer to question 1G is "YES," please determine which Defendants are liable in 1H.

1H. The following Defendants are liable for Plaintiff's suspension:

| | | |
|--------------------------|-----------|----------|
| Defendant McLain | YES _____ | NO _____ |
| Defendant O'Malley | YES _____ | NO _____ |
| Defendant Simon | YES _____ | NO _____ |
| Defendant City of Albany | YES _____ | NO _____ |

1I. Has Plaintiff proved that the exercise of his free speech rights was a substantial or motivating factor in any other action or actions that either alone or taken together was an adverse employment action?

YES X NO _____

If your answer to question 1I is "NO," please go to question VERDICT TWO below.

If your answer to question 1I is "YES," please determine which Defendants are liable in 1J.

1J. The following Defendants are liable for adverse employment actions:

| | | |
|--------------------------|--------------|----------|
| Defendant McLain | YES <u>X</u> | NO _____ |
| Defendant Merina | YES _____ | NO _____ |
| Defendant O'Malley | YES <u>X</u> | NO _____ |
| Defendant Simon | YES _____ | NO _____ |
| Defendant City of Albany | YES <u>X</u> | NO _____ |

VERDICT TWO: CLAIMS UNDER TITLE VII and ORS 659A.030: RETALIATION FOR REPORTING DISCRIMINATION

On Plaintiff's claim that he was retaliated against for complaining about unlawful discrimination, we find in favor of **(check one)**:

For Plaintiff Michael Hudgins X and against Defendant City X **OR** For Defendant City of Albany and against Plaintiff Michael Hudgins _____

**VERDICT THREE: RETALIATION BY A PUBLIC ENTITY FOR
WHISTLEBLOWING IN VIOLATION OF ORS 659A.203**

On Plaintiff's claim that Defendant City violated the whistleblowing laws we find in favor of **(check one)**:

For Plaintiff Michael Hudgins ✓ **OR** For Defendant City of Albany
and against Defendant City _____ and against Plaintiff Michael Hudgins _____

**VERDICT FOUR: CLAIM FOR RETALIATION FOR REPORTING CRIMINAL
ACTIVITY IN VIOLATION OF ORS 659A.230**

On Plaintiff's claim that Defendant City violated the law protecting the reporting of criminal activity we find in favor of **(check one)**:

For Plaintiff Michael Hudgins ✓ **OR** For Defendant City of Albany
and against Defendant City _____ and against Plaintiff Michael Hudgins _____

**VERDICT FIVE: CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS**

On Plaintiff's claim that Defendant City intentionally inflicted emotional distress, we find in favor of **(check one)**:

For Plaintiff Michael Hudgins ✓ **OR** For Defendant City of Albany
and against Defendant City _____ and against Plaintiff Michael Hudgins _____

If you found for Plaintiff on one or more claims above, please consider verdict SIX. If you find in favor of Defendants on all claims in Verdicts ONE, TWO, THREE, FOUR, and FIVE, please skip verdict SIX and have your foreperson sign and date the verdict form below.

VERDICT SIX: DAMAGES

You must now determine Plaintiff's damages on any verdict you returned in his favor. Each claim for relief allows for recovery of only certain types of damages. Therefore, do not be concerned that the damages available under each claim are not the same. Award the total amount of damages for each claim without regard to duplication, then follow the instruction and indicate what amount of that award, if any, is also awarded on another claim. The Court will then take action to assure that the duplicated amount is not awarded more than once.

6A. Free Speech

6A1. On Plaintiff's Free Speech claims, VERDICT ONE, we find Plaintiff's economic damages to be (if none, write "NONE"):

Do not be concerned that awarding past and future wage loss and detective differential would result in a double recovery or are mutually exclusive. Award all damages you find plaintiff has proven. The court will assure that there is no double recovery. Apply this rule throughout your consideration of plaintiff's damages.

| | |
|--|------------------------------------|
| Past and future wage and benefit loss: | \$ <u>280,000.00</u> |
| Criminal defense costs: | \$ <u>6,000.00</u> |
| Detective differential: | \$ <u>12,000.00</u> |
| Past and future medical expenses: | \$ <u>20,000.00</u> |
| TOTAL ECONOMIC DAMAGES | \$ <u>318,000.00</u> ^{SD} |

6A2. On Plaintiff's Free Speech claims, VERDICT ONE, we find the Plaintiff's total non-economic damages to be (if none, write "NONE"):

\$ 1,000,000.00

6A3. On Plaintiff's Free Speech claims, we award punitive damages in the following amounts against the following Defendants (if none, write "NONE"):

| | |
|--------------------|---------------------|
| Defendant McLain | \$ <u>32,000.00</u> |
| Defendant Merina | \$ <u>NONE</u> |
| Defendant O'Malley | \$ <u>85,000.00</u> |
| Defendant Simon | \$ <u>NONE</u> |

6B. Retaliation: Discrimination

6B1. On Plaintiff's Retaliation: Discrimination claim, VERDICT TWO, we find Plaintiff's economic damages to be (if none, write "NONE"):

| | |
|--|-----------------------------|
| Past and future wage and benefit loss: | \$ <u>280,000.00</u> |
| Criminal defense costs: | \$ <u>6,000.00</u> |
| Detective differential: | \$ <u>12,000.00</u> |
| Past and future medical expenses: | \$ <u>20,000.00</u> |
| TOTAL ECONOMIC DAMAGES | \$ <u>307,200.00</u> |

To avoid duplication, what amount, if any, of these damages were also awarded in 6A1? (If none, write "NONE")

\$ 307,200.00 (EVD)

6B2. On Plaintiff's Retaliation: Discrimination claim, VERDICT TWO, we find the Plaintiff's total non-economic damages to be (if none, write "NONE"):

\$ 1,000,000.00

To avoid duplication, what amount, if any, of these damages were also awarded in 6A2? (If none, write "NONE")

\$ 1,000,000.00

6C. Whistleblowing – Public Entity

6C1. On Plaintiff's Whistleblowing: Public Entity claim, VERDICT THREE, we find Plaintiff's economic damages to be (if none, write "NONE"):

| | |
|--|----------------------|
| Past and future wage and benefit loss: | \$ <u>280,000.00</u> |
| Criminal defense costs: | \$ <u>6,000.00</u> |
| Detective differential: | \$ <u>12,000.00</u> |
| Past and future medical expenses: | \$ <u>70,000.00</u> |
| TOTAL ECONOMIC DAMAGES | \$ <u>307,200.00</u> |

To avoid duplication, what amount, if any, of these damages were also awarded in 6A1 and/or 6B1? (If none, write "NONE")

\$ ~~307,200.00~~ 0.00 (SVD)

6C2. On Plaintiff's Whistleblowing: Public Entity claim, VERDICT THREE, we find the Plaintiff's total non-economic damages to be (if none, write "NONE"):

\$ 1,000,000.00

To avoid duplication, what amount, if any, of these damages were also awarded in 6A2 and/or 6B2? (If none, write "NONE")

\$ 1,000,000.00

6D. Whistleblowing – Reporting Criminal Activity

6D1. On Plaintiff's Whistleblowing: Reporting Criminal Activity claim, VERDICT FOUR, we find Plaintiff's economic damages to be (if none, write "NONE")

Past and future wage and benefit loss: \$ 280,000.00

Criminal defense costs: \$ 6,000.00

Detective differential: \$ 12,000.00

Past and future medical expenses: \$ 20,000.00

TOTAL ECONOMIC DAMAGES \$ 307,200.00

To avoid duplication, what amount, if any, of these damages were also awarded in 6A1, 6B1 and/or 6C1? (If none, write "NONE")

\$ 308,000.00 (SVD)

6D2. On Plaintiff's Whistleblowing: Reporting Criminal Activity claim, VERDICT FOUR, we find the Plaintiff's total non-economic damages to be (if none, write "NONE"):

\$ 1,000,000.00

To avoid duplication, what amount, if any, of these damages were also awarded in 6A2, 6B2 and/or 6C2? (If none, write "NONE")

\$ 1,000,000.00

6E. Intentional Infliction of Emotional Distress

6E1. On Plaintiff's Intentional Infliction of Emotional Distress claim, VERDICT FIVE, we find Plaintiff's economic damages to be (if none, write "NONE")

Past and future wage and benefit loss: \$ 280,000.00
 Criminal defense costs: \$ 6,000.00
 Detective differential: \$ 12,000.00
 Past and future medical expenses: \$ 20,000.00
 TOTAL ECONOMIC DAMAGES \$ 307,200.00

To avoid duplication, what amount, if any, of these damages were also awarded in 6A1, 6B1, 6C1 and/or 6D1? (If none, write "NONE")

\$ 348,000.00 (SD)

6E2. On Plaintiff's Intentional Infliction of Emotional Distress claim, VERDICT FIVE, we find the Plaintiff's total non-economic damages to be (if none, write "NONE"):

\$ 1,000,000.00

To avoid duplication, what amount, if any, of these damages were also awarded in 6A2, 6B2, 6C2 and/or 6D2? (If none, write "NONE"):

\$ 1,000,000.00

Once you have completed this question, have your foreperson sign and date this form.

DATED: May 20 2005

FOREPERSON: [Signature]